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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

INTERNATIONAL RAELIAN  
MOVEMENT (IRM), a Foreign  
Corporation,

Plaintiff,

2:08-cv-0687 FCD DAD

v.

ABDULLAH HASHEM and  
HASHEM(S) FILMS,

FINDINGS AND RECOMMENDATIONS

Defendants.

\_\_\_\_\_/

This matter came before the court on December 17, 2010, for hearing of plaintiff's amended second motion for default judgment (Doc. No. 53). Thomas D. Easton, Esq. appeared telephonically for plaintiff. No appearance was made by or on behalf of defaulted defendants Abdullah Hashem and Hashem(s) Films. Oral argument was heard, and the motion was taken under submission.

The undersigned has carefully considered plaintiff's arguments at the hearing, all written materials submitted with respect to the motion, and the entire file. For the reasons set forth below, the undersigned recommends that plaintiff's amended motion for default judgment be granted on plaintiff's claim for replevin.

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1 **PROCEDURAL BACKGROUND**

2 Plaintiff commenced this action on April 1, 2008, by filing a complaint against  
3 five named defendants.<sup>1</sup> (Doc. No. 1) On June 4, 2008, defendant Joseph McGowen filed a  
4 declaration that was deemed to be a pro se answer to the complaint. (Doc. No. 7.) By stipulation  
5 and order filed May 14, 2009, plaintiff's claims against defendant McGowen were dismissed  
6 with prejudice. (Doc. No. 29.)

7 On July 15, 2009, the assigned district judge granted plaintiff's motion for  
8 alternative service on defendants Abdullah Hashem and Hashem(s) Films. (Doc. No. 32.)  
9 Despite being served with process in the manner approved by the court, these defendants failed to  
10 appear in the action. Pursuant to plaintiff's evidence of service and request for entry of default,  
11 the Clerk entered the defaults of defendants Abdullah Hashem and Hashem(s) Films on October  
12 22, 2009. (Docs. No. 33, 34, 35.)

13 On October 27, 2009, plaintiff filed a motion for default judgment noticed for  
14 hearing before the undersigned pursuant to Local Rule 302(c)(19). (Doc. No. 38.) At the hearing  
15 on December 4, 2009, plaintiff's counsel appeared telephonically. No appearance was made by  
16 or on behalf of defendants Abdullah Hashem and Hashem(s) Films. The undersigned requested  
17 further briefing and continued the hearing to January 29, 2010. (Doc. Nos. 39, 40.) Despite  
18 being served with all papers filed in connection with plaintiff's motion for default judgment,<sup>2</sup>

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20 <sup>1</sup> On January 10, 2010, plaintiff voluntarily dismissed without prejudice unserved  
21 defendants Dragonslayer and Muslims United TV, as well as all DOE defendants. (Doc. No. 41.)

22 <sup>2</sup> An application for default judgment must be served upon the party against whom  
23 judgment is sought only if that party has appeared in the action. Fed. R. Civ. P. 55(b)(2). See  
24 also Local Rule 135(d) (excusing parties from serving documents on defaulted parties unless a  
25 document submitted for filing asserts new or additional claims for relief against the defaulted  
26 parties). "No party in default is entitled to 55(b)(2) notice unless he has 'appeared' in the action.  
The appearance need not necessarily be a formal one, i.e., one involving a submission or  
presentation to the court. In limited situations, informal contacts between the parties have  
sufficed when the party in default has thereby demonstrated a clear purpose to defend the suit."  
Wilson v. Moore & Assoc., 564 F.2d 366, 368-69 (9th Cir. 1977). Plaintiff prudently served the  
defaulted defendants with all papers related to the motion for default judgment.

1 defendants Abdullah Hashem and Hashem(s) Films did not file any written opposition to the  
2 motion nor did they appear at either hearing on the motion.

3 In findings and recommendations filed September 1, 2010, the undersigned  
4 determined that plaintiff had demonstrated entitlement to a default judgment but had not  
5 established entitlement to the relief sought. (Doc. No. 47 at.) Accordingly, the undersigned  
6 recommended that the motion be denied without prejudice to the filing of a second motion. (Id.)  
7 Those findings and recommendations were adopted in full on September 28, 2010. (Doc. No.  
8 50.) Plaintiff filed its second motion for default judgment on November 11, 2010. (Doc. No.  
9 51.) An amended second motion for default judgment was filed on November 16, 2010. (Doc.  
10 No. 53.)

### 11 **PLAINTIFF'S COMPLAINT**

#### 12 I. Plaintiff's Allegations

13 International Raelian Movement (IRM) is an organization based in Switzerland  
14 and organized under the laws of Switzerland. Through national affiliates, IRM promotes  
15 nonviolent philosophical teachings worldwide through its members, web sites, seminars, and  
16 publications. (Compl. (Doc. No. 1) ¶ 21.)

17 IRM and others were victims of an ongoing scheme of racketeering, fraud,  
18 blackmail, and extortion begun in 2005 and perpetrated by defendants Abdullah Hashem and  
19 Joseph McGowen through false front media companies Dragonslayer Productions, Hashem(s)  
20 Films, and Muslims United TV. The purpose of defendants' scheme was to obtain plaintiff's  
21 property through fraud, disparagement, threats, extortion, blackmail, damage, and conversion and  
22 to file false allegations of criminality against plaintiff for profit, based on an overall criminal  
23 structure. In furtherance of the scheme, defendants Hashem and McGowen posed as a legitimate  
24 media partnership and fraudulently obtained film footage of plaintiff's operations and likenesses  
25 of plaintiff's members. Defendants Hashem and McGowen then acted in accordance with a plan  
26 that included threats of violence, disparagement, allegations of criminality, and the impugning of

1 plaintiff's reputation for the purposes of obtaining an anticipated payoff from plaintiff,  
2 defrauding others, and profiting at the expense of plaintiff's reputation. Plaintiff refused to pay  
3 defendants, who then converted the IRM film footage to their own use to further their illegal  
4 scheme. As a result of defendants' illegal scheme, plaintiff suffered damages in excess of  
5 \$75,000 "including adverse publicity and damage to its reputation, legal fees, conversion of its  
6 property, [and] unauthorized use of its officers and members' likenesses." In addition to  
7 damages, plaintiff seeks replevin of the IRM film footage in defendants' possession. (Id. ¶¶ 1-4.)

8 Defendants conspired with each other for over three years to defraud plaintiff and  
9 obtain property belonging to plaintiff and others. Defendants' scheme of fraud and racketeering  
10 activities consisted of an intricate pattern of individual transactions and group transactions.  
11 Defendants' conduct violated criminal statutes, including mail and wire fraud, 18 U.S.C. §§ 1341  
12 and 1343; interference with commerce by threats and violence, 18 U.S.C. § 1513; retaliation and  
13 threats against a witness, 18 U.S.C. §§ 873 and 875; blackmail and extortion, 18 U.S.C. § 1951;  
14 interstate and foreign travel in aid of racketeering enterprises, 18 U.S.C. § 1952; and money  
15 laundering, 18 U.S.C. § 1957. Defendants' activities caused pervasive and substantial harm to  
16 persons engaged in interstate and foreign commerce. (Id. ¶¶ 13-20.)

17 Defendants perpetrated two illegal schemes against IRM. The first scheme  
18 commenced in May 2005, when defendants Hashem and McGowen presented themselves as  
19 aspiring film makers and proposed that they make a fair and balanced documentary film about  
20 IRM and its members. Defendant McGowen signed a release indicating that the documentary  
21 film and all film footage obtained would remain the sole property of IRM and that any use or  
22 exhibition of the footage would be allowed only with the prior approval of IRM. Pursuant to that  
23 agreement, defendants were allowed to obtain many hours of film footage of IRM functions and  
24 IRM members. In August 2005, instead of submitting their film footage to IRM, defendants  
25 Hashem and McGowen demanded that, in exchange for their release of the film to IRM, IRM  
26 cease all activities in the United States and Egypt, and IRM's leader step down, make certain

1 damaging admissions, issue a public apology, and return all IRM donations and funds to their  
2 sources. IRM refused defendants' demands and refused to pay any funds to defendants.  
3 Defendants then began a media campaign to promote a film about IRM, which they titled "Little  
4 Claudy" and which included false and damaging allegations of criminality, sexual misconduct,  
5 and financial fraud.

6 In late 2005, defendants Hashem and McGowen established Dragonslayer  
7 Productions as the next phase of their illegal scheme, which was to market the rights to the film  
8 footage in question. In 2005 to 2006, defendant Hashem traveled to California to seek funding  
9 for the anti-IRM project, which had turned into a for-profit movie. Defendants Hashem and  
10 McGowen sold shares in this film project, which included footage owned by IRM. In September  
11 2005, defendants Hashem and McGowen created additional web sites and established the entity  
12 "Hashem(s) Films" to promote the film they called "Little Claudy," a derisive reference to the  
13 founder of IRM. Defendants' web sites contained defamatory materials and incited religious  
14 hatred and ridicule towards the IRM while seeking monetary support. Defendants also used  
15 many web sites and blogs as vehicles to exhibit out takes of "Little Claudy" and attacks on IRM,  
16 with unauthorized use of IRM film footage, likenesses of IRM members, and copyrighted IRM  
17 materials. In false statements to a news service and others, defendants claimed that IRM had  
18 tried to pay them to prevent release of the movie and accused IRM of crimes. In November  
19 2006, defendants exhibited the finished film "Little Claudy" at a university in Indiana and  
20 received benefits from that university. IRM spent approximately \$10,000 in legal fees to halt  
21 further distribution of the film by filing complaints with the university and other entities.  
22 Although plaintiff IRM was partially successful in blocking further release of the movie,  
23 defendants re-edited the film footage and used some of it in an ongoing Muslim fundamentalist  
24 serial called "The Djall," or Anti-Christ, where they identified IRM and its members as servants  
25 of the Anti-Christ. Throughout 2007 and up to the date of the filing of the complaint in this  
26 action, defendants continued to retaliate against IRM and its members by mass producing and

1 distributing dozens of attack videos aimed at discrediting and disparaging IRM by accusing it of  
2 being a criminal and demonic organization. (Id. ¶¶ 32-44.)

3 Defendants' second scheme involved Ramon Watkins, a disabled African  
4 American radio and television minister residing in Nevada who goes by the name Prophet  
5 Yahweh and is a self-described expert in UFO's. In 2006, defendants Hashem and McGowen  
6 provided funds to Watkins to travel to Indiana for the purpose of making a film about Watkins'  
7 life. The film was intended to ridicule Watkins rather than to promote him and was part of  
8 defendants' criminal scheme to defraud Watkins and IRM through a project called "Prophets of  
9 the Gods." Defendants repeatedly told Watkins, and manufactured evidence to demonstrate, that  
10 IRM and its members were plotting against him, provoking Watkins to respond by making  
11 threats of violence, including death threats, against IRM by telephone and in film produced by  
12 defendants. Defendants publicized the threats made by Watkins and doctored film footage  
13 belonging to IRM to make it appear that IRM and Watkins were enemies and that they were  
14 threatening each other. Defendants attempted through several means to obtain investors for a  
15 film about this phony feud between Watkins and IRM. Such attempts included entering the film  
16 concept in a Fox TV reality program called "On the Lot," on which the concept appeared in the  
17 2007 television season. When efforts to promote "Prophets of the Gods" flagged, defendant  
18 Hashem proposed to Watkins that he shoot himself with a firearm to inflict nonlethal wounds  
19 that would be reported to law enforcement as an attempted assassination by IRM. When Watkins  
20 declined, defendants began to vilify Watkins on You Tube and other venues in 2007. (Id. ¶¶ 45-  
21 49.)

22 Defendants also engaged in illegal schemes that did not target IRM. The schemes  
23 included a federal civil rights complaint in which Hashem alleged false claims of employment  
24 discrimination based on his Egyptian heritage and a federal civil rights complaint in which  
25 Hashem, McGowen, and another individual accused several companies of sexual harassment and  
26 discrimination due to national origin. (Id. ¶¶ 50-51.)

1           In February 2008, two “whistleblowers” – an investigative internet-radio  
2 journalist who had been taken into defendants’ confidence and an individual that defendant  
3 McGowen stayed with for a month in California – voluntarily provided information to IRM about  
4 defendants’ activities. Defendants and their agents then began making threats against the  
5 investigative journalist on Muslims United TV and on the telephone, placing the journalist in fear  
6 of his life because he was portrayed as an enemy of the Muslim faith who might be targeted for  
7 retaliation. (Id. ¶¶ 52-56.)

8           Defendants effected their illegal scheme by a pattern of related acts of actual or  
9 attempted mail and wire fraud, extortion and blackmail, money laundering, and interstate travel  
10 in aid of racketeering which were agreed upon and coordinated by the defendants as part of their  
11 conspiracy to effect their scheme. Each defendant knowingly participated in the formation of the  
12 illegal scheme with one or more other defendants and willingly participated therein by knowingly  
13 and intelligently carrying out the predicate acts. The illegal scheme began no later than 2005 and  
14 was continuing when plaintiff’s complaint was filed. (Id. ¶¶ 57-60.)

15           Predicate acts of actual or attempted extortion and blackmail through threats of  
16 physical harm or economic loss in violation of 18 U.S.C. §§ 1951, 1513, 873 and 875 included  
17 (1) obtaining IRM film footage under false pretenses in order to attempt to extort financial  
18 benefits from IRM; (2) repeatedly threatening IRM and its members with allegations of  
19 criminality; (3) convincing and inducing Ramon Watkins a.k.a. Prophet Yahweh to make threats  
20 of violence against IRM; (4) soliciting Ramon Watkins a.k.a. Prophet Yahweh to self-inflict gun  
21 shot wounds on himself and blame IRM; and (5) making threats of retaliation against an  
22 investigative internet-radio journalist who provided IRM with information about defendants’  
23 anti-IRM activities. (Id. ¶¶ 61-66.)

24           Predicate acts of mail and wire fraud in violation of 18 U.S.C. §§ 1341 and 1343  
25 included defendants’ use of Paypal and Ebay accounts to receive funds used in the illegal scheme  
26 against IRM; use of funds received through the Paypal and Ebay accounts to set up defendant

1 false front company Muslims United TV; and receipt and use of funds that had their origin with  
2 radical Muslim organizations outside the United States. (Id. ¶¶ 67-70.)

3 Predicate acts of money laundering in violation of 18 U.S.C. § 1957 included the  
4 laundering of funds derived from unauthorized use of IRM's film footage and defendants'  
5 ensuing criminal acts through defendants' Paypal account and other bank accounts. These acts  
6 were in furtherance of defendants' actual or attempted acts of unlawful extortion, mail and wire  
7 fraud, and Travel Act violations. (Id. ¶¶ 71-73.)

8 Predicate acts of interstate and foreign travel in aid of racketeering in violation of  
9 18 U.S.C. § 1952 included defendants' travel and the travel of others on their behalf from Indiana  
10 to California and Nevada. The predicate acts of interstate and foreign travel in aid of  
11 racketeering were in furtherance of defendants' actual or attempted acts of unlawful extortion,  
12 money laundering, mail and wire fraud, and other acts. (Id. ¶¶ 74-76.)

## 13 II. Plaintiff's Causes of Action and Prayer for Relief

14 Plaintiff alleges the following four RICO causes of action and two state law  
15 causes of action.

16 Count I asserts a violation of 18 U.S.C. § 1962(a). Plaintiff claims that  
17 defendants received income from a pattern of racketeering when they received income as a result  
18 of their ongoing use of IRM film footage, which was effected through mail and wire fraud,  
19 money laundering, extortion, and violations of the Travel Act. As a result of defendants' use of  
20 racketeering income, plaintiff seeks damages in an amount in excess of \$75,000. (Id. ¶¶ 77-80.)

21 Count II asserts a violation of 18 U.S.C. § 1962(b). In this regard, plaintiff claims  
22 that defendants received income from a pattern of racketeering and used the income to establish  
23 and maintain Muslims United TV, a criminal racketeering enterprise that continues to use IRM  
24 film footage to raise funds. As a result of defendants' acquisition, maintenance, and control of  
25 Muslims United TV, plaintiff seeks damages in an amount in excess of \$75,000. (Id. ¶¶ 81-84.)

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1 Count III asserts a violation of 18 U.S.C. § 1962(c). Therein, plaintiff claims that  
2 defendants conducted and participated in the conduct of Dragonslayer Productions, Muslims  
3 United TV, and Hashem(s) Films through a pattern of racketeering activity. The pattern of  
4 racketeering included mail and wire fraud, money laundering, extortion, violations of the Travel  
5 Act, and other illegal acts. As a result of defendants' racketeering conduct, plaintiff seeks  
6 damages in an amount in excess of \$75,000. (Id. ¶¶ 85-88.)

7 Count IV asserts a violation of 18 U.S.C. § 1962(d). Plaintiff claims that  
8 defendants conspired among themselves and with others to violate § 1962(a), (b), and (c).  
9 Defendants knowingly agreed among themselves to commit or participate in at least two  
10 predicate acts in furtherance of the conspiracy. Given the complexity and far-reaching nature of  
11 the conspiracy and number of instances in which defendants engaged in the predicate acts, those  
12 acts could not have been committed by defendants without coordination and agreement among  
13 them to knowingly participate in the conspiracy. As a result of defendants' racketeering  
14 conspiracy, plaintiff seeks damages in an amount in excess of \$75,000. (Id. ¶¶ 89-93.)

15 Count V alleges a state law claim of replevin. Plaintiff claims that defendants  
16 wrongfully converted and exercised control and continue to exercise control over film footage  
17 that belongs to plaintiff. IRM requests that the film footage be surrendered to the court for  
18 safekeeping and upon successful conclusion of the case that the footage be returned to plaintiff.  
19 (Id. ¶¶ 94-96.)

20 Count VI asserts a violation of California Civil Code § 3344. Plaintiff claims that  
21 film footage in defendants' possession includes numerous recognizable instances of the use of  
22 IRM officials' and members' names, voices, signatures, photographs, or likenesses, and  
23 defendants have used these to promote illegal activity at Muslims United TV, Hashem(s) Films,  
24 and Dragonslayer Productions. With respect to this claim, plaintiff seeks "\$750 each on behalf  
25 of its officers and members." (Id. ¶¶ 97-101.)

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1 Plaintiff prays for compensatory damages in excess of \$75,000, treble damages,  
2 costs and attorney fees, and such other legal or equitable relief as is deemed necessary to achieve  
3 a just result.

4 **LEGAL STANDARD**

5 Federal Rule of Civil Procedure 55(b)(2) governs applications to the court for  
6 default judgment. Upon entry of default, the complaint's factual allegations regarding liability  
7 are taken as true, while allegations regarding the amount of damages must be proven. Dundee  
8 Cement Co. v. Howard Pipe & Concrete Products, 722 F.2d 1319, 1323 (7th Cir. 1983) (citing  
9 Geddes v. United Fin. Group, 559 F.2d 557 (9th Cir. 1977)); see also TeleVideo Sys., Inc. v.  
10 Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Where damages are liquidated (i.e., capable of  
11 ascertainment from definite figures contained in the documentary evidence or in detailed  
12 affidavits), judgment by default may be entered without a damages hearing. See Dundee, 722  
13 F.2d at 1323. Unliquidated and punitive damages, however, require "proving up" at an  
14 evidentiary hearing or through other means. Dundee, 722 F.2d at 1323-24; see also James v.  
15 Frame, 6 F.3d 307, 310 (5th Cir. 1993).

16 Granting or denying default judgment is within the court's sound discretion, see  
17 Draper v. Coombs, 792 F.2d 915, 924-25 (9th Cir. 1986), and the court is free to consider a  
18 variety of factors in exercising that discretion, see Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th  
19 Cir. 1986). The court may consider such factors as:

20 (1) the possibility of prejudice to the plaintiff, (2) the merits of  
21 plaintiff's substantive claim, (3) the sufficiency of the complaint,  
22 (4) the sum of money at stake in the action, (5) the possibility of a  
23 dispute concerning material facts, (6) whether the default was due  
to excusable neglect, and (7) the strong policy underlying the  
Federal Rules of Civil Procedure favoring decisions on the merits.

24 Eitel, 782 F.2d at 1471-72 (citing 6 Moore's Federal Practice, ¶ 55-05[2], at 55-24 to 55-26).

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1 ANALYSIS

2 I. Plaintiff's Arguments

3 In its second motion for default judgment, plaintiff argues that there is no factual  
4 dispute that plaintiff is bereft of its film footage due to the actions of defendants and that the film  
5 footage has a tangible value, albeit one that is difficult to determine. (Doc. No. 53 at 10.) With  
6 respect to its RICO claims, plaintiff suggests that it has suffered injury to its property or business  
7 in that defendants continue to control and market plaintiff's film footage. (Id.) Plaintiff  
8 concludes that its cause of action for replevin offers a reasonable remedy on default judgment  
9 under the circumstances of the case. (Id. at 11.)

10 Plaintiff reasons that an order for replevin would permit plaintiff to recover its  
11 film footage and make itself whole by using the film footage as it pleases, which may include  
12 production of the originally envisioned documentary film without incurring the \$665,134  
13 previously sought by plaintiff as the replacement value of the proposed film. (Id.) Plaintiff cites  
14 California law in support of an order of replevin as a proper remedy under California law. (Id.)  
15 (citing Cal. Code Civ. Proc. § 667; Grey v. Milligan, 101 Cal. App. 328 (1929); Al G. Barnes  
16 Shows Co. v. Toyo Kisen Kaisha Oriental Steamship Co., 61 Cal. App. 304 (1923)). Plaintiff  
17 therefore requests an order of replevin for possession of the identifiable film footage obtained by  
18 defendants from plaintiff. (Id. at 12.) Plaintiff offers a proposed default judgment in which the  
19 defaulted defendants are ordered to return the film footage described in plaintiff's complaint to  
20 plaintiff within 30 days, with the issue of damages reserved in the event of non-delivery by  
21 defendants. (Id. at 13.)

22 II. Discussion

23 Upon weighing the factors outlined in Eitel, 782 F.2d at 1471-72, the undersigned  
24 finds as follows: the defaulting defendants have not appeared, have not opposed plaintiff's  
25 motions in any way, and have made no showing that their failure to respond to the complaint is  
26 due to excusable neglect; plaintiff's complaint is, for the most part, sufficient with respect to the

1 allegations of the defaulted defendants' liability, and there is no reason to doubt the merits of  
2 plaintiff's substantive claims against the defaulted defendants; in light of the defaulted  
3 defendants' failure to appear and failure to oppose plaintiff's claims, there is no possibility of a  
4 dispute concerning the material facts underlying this action; although public policy favors  
5 decisions on the merits, such a decision has been rendered impossible by the defendants'  
6 defaults. All of these factors weigh in plaintiff's favor and warrant entry of default judgment.

7           When a court determines that a default judgment is warranted and proceeds to  
8 determine the terms of the judgment, the relief granted may not be different in kind from, or  
9 exceed in amount, what is demanded in the complaint. Fed. R. Civ. P. 54(c). Here, the  
10 undersigned finds that plaintiff has again failed to offer evidence of a concrete financial loss  
11 proximately caused by defendants as a result of the conduct alleged in plaintiff's four RICO  
12 causes of action. Under 18 U.S.C. § 1964(c), a plaintiff must show that alleged RICO violations  
13 proximately caused an injury to the plaintiff's business or property.<sup>3</sup> Canyon County v. Syngenta  
14 Seeds, Inc., 519 F.3d 969, 972 (9th Cir. 2008). Not every injury to business or property is  
15 compensable under RICO, and the Ninth Circuit "requires that a plaintiff asserting injury to  
16 property allege 'concrete financial loss.'" Canyon County, 519 F.3d at 975 (quoting Oscar v.  
17 Univ. Students Co-operative Ass'n, 965 F.2d 783, 785 (9th Cir. 1992) (en banc)). See also  
18 Imagineering, Inc. v. Kiewit Pacific Co., 976 F.2d 1303, 1310 (9th Cir. 1992) (citing Oscar, 965  
19 F.2d at 785). In general, injury to a valuable intangible property interest does not constitute  
20 injury to business or property for purposes of RICO. Oscar, 965 F.2d at 785; Berg v. First State  
21 Ins. Co., 915 F.2d 460, 464 (9th Cir. 1990). Although plaintiff has alleged unspecified damages  
22 in excess of \$75,000 with respect to each of its four RICO causes of action, no damages should  
23 be awarded absent evidence of concrete financial loss attributable to those RICO causes of  
24 action. See Alan Neuman Prods., Inc. v. Albright, 862 F.2d 1388, 1393 (9th Cir. 1989) (holding

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26 <sup>3</sup> State law typically determines whether a given interest qualifies as "property." Diaz v.  
Gates, 420 F.3d 897, 899 (9th Cir. 2005).

1 that “pleading requirements should be enforced strictly when default judgments are sought under  
2 RICO” because the monetary penalty for a defendant’s failure to answer is greatly enhanced by  
3 RICO’s provision for treble damages).

4 In the present case, plaintiff has also alleged two causes of action in addition to  
5 the four RICO causes of action. The sixth cause of action in plaintiff’s complaint alleges  
6 violations of California Civil Code § 3344 and seeks \$750 in statutory damages for defendants’  
7 use of film footage depicting names, voices, signatures, photographs, and likenesses of officers  
8 and members of IRM. However, plaintiff has not requested the award of such damages in either  
9 of its motions for default judgment. Moreover, plaintiff has not demonstrated that it has standing  
10 to seek damages on behalf of individuals who are not parties to this action and has not offered  
11 argument or evidence in support of an award of statutory damages on behalf of others. For these  
12 reasons, plaintiff is not entitled to an award of statutory damages under California Civil Code §  
13 3344.

14 Plaintiff’s fifth cause of action is for replevin, and this is the form of relief  
15 plaintiff has requested in its amended second motion for default judgment. The undersigned  
16 recommends that plaintiff be granted an order for replevin requiring the defaulted defendants to  
17 return the film footage described in plaintiff’s complaint to plaintiff within 30 days. However,  
18 the undersigned declines to recommend that the issue of damages in the event of non-delivery by  
19 defendants be reserved as suggested by plaintiff. Plaintiff has had two opportunities and ample  
20 time to propose alternative damages and provide evidence in support of the award of such  
21 damages. (*Id.* at 13.) Despite such opportunities, plaintiff has failed to support a claim for  
22 damages in connection with the motion for default judgment.

23 **CONCLUSION**

24 “Clearly, the decision to enter a default judgment is discretionary.” Alan Neuman  
25 Prods., Inc., 862 F.2d at 1392 (citing Hawaii Carpenters’ Trust Funds v. Stone, 794 F.2d 508,

26 ////

1 511-12 (9th Cir. 1986), Eitel, 782 F.2d at 1471, and Aldabe v. Aldabe, 616 F.2d 1089, 1092 (9th  
2 Cir. 1980)). The undersigned recommends that default judgment be entered in this case.

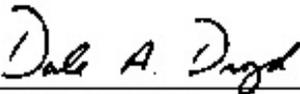
3 Accordingly, IT IS HEREBY RECOMMENDED that:

4 1. Plaintiff's amended second motion for default judgment (Doc. No. 53) be  
5 granted; and

6 2. An order for replevin be entered requiring defaulted defendants Abdullah  
7 Hashem and Hashem(s) Films to return to plaintiff International Raelian Movement the film  
8 footage described in plaintiff's complaint within 30 days after default judgment is entered against  
9 these defendants.

10 These findings and recommendations are submitted to the United States District  
11 Judge assigned to the case pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen  
12 days after service of these findings and recommendations, any party may file written objections  
13 with the court and shall serve a copy of the objections on all parties. Any reply to objections  
14 shall be filed and served within seven days after the objections are served. The parties are  
15 advised that failure to file objections within the specified time may, under certain circumstances,  
16 waive the right to appeal the District Court's order. See Martinez v. Ylst, 951 F.2d 1153 (9th  
17 Cir. 1991).

18 DATED: August 24, 2011.

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20   
21 \_\_\_\_\_  
DALE A. DROZD  
UNITED STATES MAGISTRATE JUDGE

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